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No. 97-55

IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

FRANK KEATING, Governor of the State of Oklahoma
and KEN FEAGINS, a nonresident individual,

Petitioners,

—v.—

STATE OF OKLAHOMA, ex rel.,
OKLAHOMA TAX COMMISSION,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF OKLAHOMA—DIVISION NO. 1

MOTION FOR LEAVE TO FILE AND BRIEF OF COLONEL ORVAL Q. MATTESON AND FLORENCE B. MATTESON AS *AMICUS CURIAE* IN SUPPORT OF THE PETITION

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MOTION BY COLONEL ORVAL Q. MATTESON AND MRS. FLORENCE B. MATTESON FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* IN SUPPORT OF THE PETITION

Colonel Orval Q. Matteson and Mrs. Florence B. Matteson ("Mattesons") respectfully move for leave to file the attached brief *amicus curiae*. Consent of the attorneys for the petitioners has been obtained. The consent of the attorneys for the respondent was requested but refused.

We were the pro se plaintiffs in *Matteson v. Director of Revenue, State of Missouri*, 909 S.W.2d 356 (Mo. 1995), cited by both the Petitioners and the Respondent in this case.

This case is of great concern to the *amicus curiae*.

Accordingly, Colonel Orval Q. Matteson and Mrs. Florence B. Matteson move for leave to file the attached brief *amicus curiae*.

Respectfully submitted,

/s/ KEN FEAGINS

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Date: August 7, 1997

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QUESTIONS PRESENTED

1. Is this Court's prior decision in *Maxwell v. Bugbee*, 250 U.S. 525 (1919), viable under *Stare Decisis*?

2. Whether the Oklahoma Court of Appeals has read *Maxwell* too broadly.

3. Should the rational of *Maxwell v. Bugbee*, 250 U.S. 525 (1919) be applied to a progressive state income tax?

PARTIES TO THE PROCEEDING

Respondent the State of Oklahoma, ex rel., the Oklahoma Tax Commission was the Respondent-Appellee below. Petitioner Governor Frank Keating succeeded Governor David Walters as Governor of the State of Oklahoma and is automatically substituted as a party pursuant to Sup.Ct.Rule 35.3. Governor Walters and Ken Feagins were the Petitioners-Appellants below.

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INTEREST OF *AMICUS CURIAE*

The interest of *amicus curiae* appears in the foregoing motion.[1]

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[1] The Mattesons prepared this brief in its entirety and paid for the associated costs of providing Counsel for Petitioners with the text. See *amicus* brief at ¶ 6. *Counsel of Record* for Petitioners, Ken Feagins, thereafter paid for the printing costs and added the necessary stylistic mandates for filing purposes. Sup.Ct.R. 37.6.

STATEMENT OF THE CASE

THE MATTESONS' *AMICUS CURIAE* BRIEF

The purpose of this Brief, Petition 97-55, for consideration of the Supreme Court of the United States as a part of its contemplation on accepting Petition 97-55 for Writ of Certiorari in this case, as well as a part of its decision-making process following its anticipated acceptance thereof, is to *emphasize* the nationwide generic application of this matter to citizens who have income-producing activities in non-resident states, and the apparent contempt, *even scorn*, in which both the tax agency and the Supreme Court of a State regarded the application of the U.S. Constitution to this question.

We, the Mattesons, of Alabama, have this relationship with three states with similar non-resident taxing procedures to those of Oklahoma, i.e., taxing non-resident income, always, despite our consistent objections thereto, resulting in the wanton degradation of our personal financial status, and of the financial status of the State of Alabama through these three states' individual application of a self-serving illusion: the non-resident's total income is taxable by said state. It surely does put a "burden" on our personal income and on that of Alabama!

This Brief details this taxing situation to show the diversities and similarities of these situations with particular emphasis and application herein of our court case with the Supreme Court of one State directed at said taxing procedure. Time now does not permit details.

REASONS FOR GRANTING THE WRIT

SUMMARY OF ARGUMENT

CLARIFYING PROLOGUE

1. We, Mrs. Florence B. Matteson and Colonel Orval Q. Matteson (U.S. Regular Army, Retired), were the appellants in the before-mentioned court case, which started with the Missouri Administrative Hearing Commission with three parts, and went to the State Supreme Court as the AHC had no jurisdiction in the issue of Constitutionality and effects of taxing statutes; see Table of Authorities in said No. 97-55.

2. Throughout, without exception, the Mattesons represented themselves, with COL Matteson filling the attorney role; no professional lawyer or legal services were ever involved. Although COL Matteson has no legal training, he, in serving his last 20 years in critical assignments, four with Dept. of the Army Hq. and others near to it, has produced rooms of studies, evaluations, directives, etc. In doing so he generated policies and procedures for the Army and other Services, comparable to State Statutes or Court Briefs, as well as rules and regulations which had therein the effects of laws of the nation. Trained in Military Law he has served as attorney and judge.

3. His experience with the Missouri case opened up his knowledge to civil law as related thereto, but did not provide him with intimate details on clerical aspects such as formats, dialects and legalese, even at that level. Therefore this Brief may deviate from the norm in some respects; we ask the Court to accept such deviations and to accept our presentation on its merit.

4. Therefore, as the Mattesons are involved in the first person throughout and in the construction of this Brief, it can be expected that references to him or to them may be in the first person.

5. We have income tax relationships with Iowa and Minnesota each year, and Missouri—with Missouri, because of our ownership and management of various tracts of timberland and our occasional sale of timber, the last sale being in 1988, the sale which created the legal action previously referenced. The Missouri case involved three parts: constitutionality, authority to deduct costs of previous years' expenses never deducted on a MO return, and also inasmuch as MO had consistently ignored constitutionality in itself, the taxing per se of any retired military pay. The Iowa/Minnesota situations have never been taken to a higher level than their Internal Revenue Department.

6. Because the applications of our situations are so pertinent to the Oklahoma Case under this consideration, we were invited by Attorney Ken Feagins, attorney in said case, to participate as Friends of the Court. All costs, whatsoever, of the preparation of this Brief and its transmittal to Attorney Feagins have been borne by us, the Mattesons of 306 Reynolds Street, N.W., Jacksonville, AL 36265. No one is authorized to insert in or make changes to the text of this Brief, per se; in corporating it with whatever has to be done to present it to the Court is of course necessitated.

POINT I

THE OPINION BELOW REPRESENTS A CONTINUING SOURCE OF CONTROVERSY AND LITIGATION

STATEMENT

1. Because of time limitations the Mattesons herein will not go into a detailed discussion of the legal aspects raised in said Petition or those not included, however these pertinent observations are offered in reference to a state basing its nonresidents' taxes on income with no relationship to the taxing state, keyed to pages in the Petition.

A. P. 3a. There is no aspect of "tax equity" involved. If a resident of Oklahoma or any of our three states has income created in Alabama they are not required to pay taxes to Alabama for said income based on a rate determined by "their total taxable income" as we do, but only on their Alabama source income.

B. P. 5a. Article I. Sect. 8, of our U.S. Constitution states that Congress has the power to lay and collect taxes for the purpose of obtaining money. Is there any other purpose for laying and collecting taxes, and is not the creation of a basis for collecting tax an essential element of the laying and collecting?

C. P. 5a. Reference to this method of taxing nonresidents insofar as Missouri and we are concerned, it surely has an adverse business impact on Missouri. Although we have marketable timber and offers to buy some of our timber and/or land, because of this taxing of such proceeds against our total income we have not sold either—to Missouri's economic detriment (as well as our own).

D. P. 5/6a. If Oklahoma were not taxing a nonresident's out-of-state income a loss in said income would have no affect on the Oklahoma tax on the Oklahoma income; same for all states.

E. P.7a. The paying of a tax is impossible to construe as a donation—a gift.

F. P.7a/8a. It would be correct to conclude that the construction of a tax rate does not, per se, impose a tax on income if the application of the rate *were not* effected. It is! The effect, per se, is the exact correlative of the cause, i.e., the result of a state's law directing the incorporation of the non-resident's non-state income into the computation of the nonresident's taxable income. Thus the tax law does impose or inflict or force—"impose"—the tax per se. This, of course, does offend the IV and XIV Amendments to the U.S. Constitution.

G. P.8a. Sec. A, above. We emphasize, not just to us but also to Alabama, it is an arbitrary and discriminatory tax burden, a taking by force of our lawful assets. It is a barrier to interstate commerce, our personal dealing with Missouri's local individuals or businesses to their profit.

2. As to our personal relationships to practices of the three states, for years we have stated on the respective state returns where it is signed that the tax is being paid under protest because the tax was based on our total income. This statement was never recognized by any state; i.e., totally ignored.

3. In the Missouri case, three days after we filed on 1988 return we also sent a personal letter to the Director of Revenue restating that protest and expanding our reasoning that the inclusion of our total income was illegal and unconstitutional, and thus they had no authority to force us to pay against a rate based upon our non-Missouri income, and we claimed a refund. This also was ignored then and throughout the entire case. Through the course of this matter from 1989 to 1995 there were several letter/form exchanges between us and the Director of Revenue, and then the Administrative Hearing Commission (Briefs, Hearing), and then their Supreme Court (Briefs, etc.). All of these times we continued to press against including our non-Missouri based income and claimed a refund. In all cases this protest was in effect ignored. Ignored, Ignored, Ignored.

4. Equity was never a product of Justice. Justice was a product of Greed: Money! Yes, money from nonresidents no matter what, dominated the conduct of the Director of Revenue, The Attorney General, and their Supreme Court who apparently never read the AHC records, nor our Briefs. Nonresidents were Nonentities!

A. They ignored our protests because we initiated them rather than wait until we received some Form from the Director of Revenue authorizing a protest.

B. They just brushed off the question of constitutionality.

C. Despite our protests, and all of our Briefs, etc. prepared after I started researching the MO Statutes, that they were basing their positions on a Statute specifically restricted to *residents* rather than another Statute specifically directed to *nonresidents*, they ignored, refused to recognize, the nonresident Statute. It stated the nonresident's taxes were to be based *only* on his in-state net income, and it specifically authorized the deduction of timber expenses as we took them—which they all constantly contended we could not take—and it specifically exempted federal military pay (and they knew I was retired military from day one) and your Court had previously decreed that retired Army, such as I am, were to be considered as on "limited active duty."

D. Further, the Director of Revenue and then the Attorney General, and the Court—although each knew it years before we did—refused to recognize that by your decree my retired military pay could not be taxed, this only because we did not list it as a separate claim until I learned from my Missouri Law research that in addition to it being non-Missouri-source income, to which we had always protested, it was so declared in Missouri. Nothing in the Missouri tax instructions indicated that as per your Court's findings and the subsequent MO Court's findings, all occurring prior to the first tax return, my military retirement pay could not be included in our taxable income in any case. As we had paid our tax based in part on that retired pay as directed and had not followed some minute procedure not detailed in their tax Instructions, I could not receive a refund reflecting the deduction of my retired pay from their calculations—*this despite* your Court's directive that military retired pay could not be taxed by a state.

E. Nothing in the MO Tax Instructions applied or detailed the provision of the Statute applied to nonresidents, or applied your decree on federal retired pay. BUT, *it in detail* prescribes that the result a nonresident gets, when he calculates the tax due based on his total taxable income taken from his Federal 1040 just like a resident, it was his "MO taxable income" and

that he "may be entitled to reduce your MO income tax liability" by applying a factor resulting from the "ratio" of his total income to his MO-source income. Those are MO words, but the other states have similar expressions and procedures to direct that a nonresident's taxable income was as calculated with his total income, with a similar procedure to create a nonresident deduction.

F. Therefore, notwithstanding the accepted position that this procedure of including a nonresident's total 1040 taxable income in the State's calculation does not "tax" such non-state income, it absolutely does, as each state we have dealt with or researched prescribes that the result of the nonresident's calculations under the state's procedures results in producing that nonresident's tax due to that state, with possibly a deduction only authorized to non-residents. And, in the end, the tax due is *far larger* than it would be if only the in-state-source income were included in the procedure.

G. Truly this matter under question in unconstitutional. See Corpus Juris Secundum—Vol. 84 . . . 1-56, 85, p. 73, U.S. Standard Oil Co., Ind. v. Thorsen, C.C.A., Ind. 29F, 2nd 70B. Or see: Austin v. New Hampshire, 420 US 656 (1975). Or see: Ward v. Maryland, 79 US (12 US 11) 41B (1870). And see: 460 U.S. 582 (1983). See James v. Tel. & Tel. Corp., C.T.S. Taxation 1096, 654 S.W. 2nd 865. And see: 105 Sect. 1676 (1985). And keeping the home state of other states' nonresidents in mind as regards its protection, see: U.S. Constitution Article I, Sect. 9(5)(6); and Art. IV, Sect. 1, 2(1), and also the 1st, 5th, and 14th Amendment's Sect. 1!

H. Another thing contrary to all of the statements that nonresidents are being treated the same as residents—not so in every state's procedures for the nonresident could not take deductions authorized to residents. A case in point is the deduction for taxes paid to other states. Why? Money. Yes, considering the negative impact on the resident state involved, it loses money because it allows its citizens to deduct from their returns the tax payments made to their non-

resident states and with these procedures in question that tax is always more than it should be because it results from applying a tax rate based on payer's Federal 1040 taxable income.

5. So, this brings you back to the U.S. Constitution again, protecting each state from all other states, and from each other.

6. Based upon our intimate association and the very first-hand erosion of our personal savings accounts, we, the Mattesons of Alabama, respectfully request that you act to accept this applicable Petition 97-55, and to rule that this greedy practice of taxing the nonresident's total Federal Taxable Income, rather than only his net in-state taxable income, be halted forthwith and perhaps be retroactive to, say 1988.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be granted.

Dated: August 7, 1997.

Respectfully submitted,

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